HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No. 471 of 2007

Between:

The Chairman-cum-Managing Director,
Bharat Dynamics Limited, Kanchanbagh,
Hyderabad and another.

… Appellants

AND

D. Shiva Kumar and another.

… Respondents

: JUDGMENT:

Counsel for the appellants: Smt. V. Uma Devi

Counsel for the respondents: Shri P. Bhaskaran

Dated: June 11, 2007

Per G.S. SINGHVI, CJ.

Whether the remedy available to a workman under

Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'), as amended by Andhra Pradesh Act No.32 of 1987, against the termination of his service in violation of the provisions of Chapter - V-A of the 1947 Act is an effective alternative remedy is one of the questions, which arises for determination in this appeal filed by the Chairman-cum-Managing Director, Bharat Dynamics Limited and another against order dated 07.02.2007 passed by the learned Single Judge in Writ Petition No.22202 of 1996 whereby he declared the termination of the services of the respondents as illegal and null and void and ordained their reinstatement with continuity of service and all consequential benefits.

In **Premier Automobiles Limited v. Kamalakar Shantaram Wadke**[1], a three Judges Bench of the Supreme Court considered the question whether an employee who falls within the definition of 'workman' under Section 2 (s) of the 1947 Act can file civil suit for enforcement of his rights under that Act and answered the same in negative. The propositions of law laid down in that judgment read as under:

> "(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.
>
> (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
>
> (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
>
> (4) If the right which is sought to be enforced is a right

created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute as the case may be."

In **Rajasthan SRTC v. Krishna Kant**[2], the Supreme Court, after making reference to the judgment in **Premier Automobiles Limited** (supra), laid down the following propositions:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 – which can be called 'sister enactments' to Industrial Disputes Act – and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to

effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly – i.e., without the requirement of a reference by the Government – in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

The same view has been expressed in **U.P. State Bridge Corpn. Ltd v. U.P. Rajya Setu Nigam S. Karamchari Sangh**[3] and

U.P. State Spg. Co. Ltd. v. R.S. Pandey[4].

The ratio of the above noted judgments is that the remedy available to a workman for enforcement of the rights flowing from the provisions of the 1947 Act is by way of seeking reference of the dispute and the High Court should refrain from entertaining writ petitions filed for enforcing of the rights emanating from the 1947 Act.

Insofar as the State of Andhra Pradesh is concerned, there is an additional reason for not entertaining the writ petition filed by the workman with the complaint of violation of the provisions of the 1947 Act. By Andhra Pradesh Act No.32 of 1987, the State Legislature inserted sub-section (2) in Section 2-A of the 1947 Act and made it possible for the aggrieved workman to directly seek remedy in the matters of termination, discharge or dismissal. In other words, a workman employed in an industry in the State of Andhra Pradesh is no longer required to approach the conciliation officer and undergo the agony of the proceedings of reference under Section 10(1)(c) read with Section 12 of the 1947 Act. This legislative measure adds to the efficacy of the remedy available to a person, who may be aggrieved by the action taken by the employer in the alleged violation of the provisions of the 1947 Act.

We may now advert to the case in hand. Respondent No.1 – D. Shiva Kumar was engaged in the employment of Bharat Dynamics Limited, Kanchanbagh, Hyderabad as casual painter on 8.8.1994. He is said to have continuously worked till 31.3.1995 and was re-appointed with effect from 7.7.1995. His service is said to have been discontinued with effect from 31.12.1995. Respondent No.2 – D. Vijay Kumar was engaged as a casual Data Entry Operator on 15.9.1994. He worked in that capacity till 31.3.1995. In July, 1995, he was re-employed and worked up to January 16, 1996. The

respondents jointly filed writ petition under Article 226 of the Constitution of India for grant of a declaration that the termination of their services is violative of Articles 14, 16, 21 and 39-D of the Constitution as also the provisions of Section 2 (r)(a) and Chapter – V-A and V-B of the 1947 Act. They also prayed for issue of a mandamus to the non-petitioners to reinstate them with all consequential benefits.

In the counter filed on behalf of the non-petitioners (the appellants herein), it was pleaded that the writ petitioners had been appointed for fixed term and that their services were not terminated by way of retrenchment. It was further pleaded that the writ petitioners are not entitled to invoke Section 25-F (B) read with Sections 25-F and H of the 1947 Act because disengagement of a casual employee cannot be treated as retrenchment within the meaning of Section 2(oo) of that Act. Yet another plea taken by the non-petitioners was that even though the writ petitioners may have worked for 240 days, they are not entitled to reinstatement.

Learned Single Judge briefly adverted to the pleadings of the parties, but without taking note of the specific plea raised in the counter-affidavit filed on behalf of the appellants that discontinuation of the engagement of the writ petitioners does not attract Section 2(oo) read with Sections 25-F and H, nullified the termination of their services only on the ground that they have worked for 240 days and before discontinuing their services, the employer did not give them notice and retrenchment compensation.

We have heard learned counsel for the parties and perused the record. In our opinion, the writ petition filed by the respondents should have been dismissed at the threshold on the ground of availability of an effective alternative remedy under Section 2-A (2) of the Act. Even at the stage of final hearing, the learned Single Judge

should have, keeping in view the law laid down in various judgments noted hereinabove, relegated the writ petitioners (the respondents herein) to the remedy available under Section 2-A (2) of the 1947 Act.

We are further of the view that the learned Single Judge ought not to have, without adverting to the specific plea taken in the counter-affidavit filed on behalf of the appellants on the issue of non-applicability of Section 25-F, granted relief to the writ petitioners by invoking the provisions of the 1947 Act. Even if the learned Single Judge was of the view that the action taken by the employer appears to be vitiated due to violation of the provisions of the 1947 Act, a finding that the employee is a workman within the meaning of Section 2(s), that he is employed in an establishment, organization or service, which falls within the definition of 'industry' under Section 2(j) and that the action taken by the employer to terminate the services of the employee amounts to retrenchment within the meaning of Section 2 (oo) must precede invalidation of the action of the employer. In the present case, the learned Single Judge did not even advert to either of these aspects. Therefore, the direction given by him for reinstatement of the respondents cannot be sustained.

There is another reason for our inclination to set aside the order under challenge. While directing reinstatement of the respondents with continuity of service and consequential benefits, the learned Single Judge completely overlooked the fact that they were engaged as casual employees for a fixed period of less than 300 days. The learned Single Judge also ignored the time gap of almost eleven years between the alleged termination of the services of the respondents and adjudication of the writ petition and the fact that during the interregnum, the respondents must have been gainfully employed in an industry or must have been earning livelihood by doing some other job. Therefore, an order for reinstatement with all

consequential benefits was not at all warranted.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition filed by the respondents is dismissed leaving them free to avail remedy by filing application under Section 2-A (2) of the 1947 Act.

As a sequel to disposal of the appeal in the manner indicated above, WAMP No.890 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ.

Date: 11.06.2007

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1975 SC 2238

[2] AIR 1995 SC 1715

[3] (2004) 4 SCC 268

[4] (2005) 8 SCC 264